

REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1-8, 11-17, 19-50, 53-68, and 70-75 are pending in the application, with claims 1, 22, 35, 40, 45, and 64 being independent. Applicant herein cancels claims 51-52 and 69 without prejudice, waiver, or disclaimer of the subject matter. Applicant herein amends claims 1, 22, 35, 40, 45, 59, and 64 in the manner discussed in the interview. Support for the claim amendments can be found in the original disclosure at least at Fig. 3, page 13, line 1 to page 14, line 12, and page 9, lines 13-24. No new matter has been added.

§ 103 REJECTIONS

A. Claims 1-3, 6-24, 28-47, 51-66, and 69-75 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Pub. No. 2005/0097599 A1 to Plotnick et al. (hereinafter “Plotnick”) in view of U.S. Patent Application Pub. No. 2005/0273828 to Barton (hereinafter “Barton”), in further view of U.S. Patent Application Pub. No. 2004/0045025 A1 to Ward (hereinafter “Ward”). Applicant respectfully traverses the rejection.

Nevertheless, without conceding the propriety of the rejection, and in the interest of expediting allowance of the application, claims 1, 22, 35, 40, 45, 59,

and 64 have been amended for clarification as discussed in the interview and are, therefore, believed to be allowable.

Independent claims 1, 22, 35, 40, and 45, as presently amended, recite in part:

wherein the advertisement is displayed in a **cell** **within** the electronic program guide, the advertisement being displayed **adjacent** to an associated media content data, the **cell corresponding** to at least one of a time of day, a type of a program, or a program channel on which the associated media content data is to be broadcast

Applicant respectfully submits that Plotnick, Barton, and Ward, whether taken alone or in combination, fail to disclose, teach, or suggest the features of independent claims 1, 22, 35, 40, and 45.

Plotnick, Barton, and Ward Fail to Disclose, Teach, or Suggest the Features of Independent Claims 1, 22, 35, 40, and 45.

Plotnick is directed to “[p]resenting viewers with an alternative brief version of a recorded advertisement when they choose to fast-forward through or skip (or any other trick play event) the recorded advertisement.” (Plotnick, Abstract). An alternate or entirely unrelated advertisement can also be displayed as the trick play advertisement. (Plotnick, para. 59). More specifically, Plotnick describes an ad targeting system which monitors and “analyze[s] viewer behavior (shows watched, channel surfing habits, commercial watching, etc.), [creating]

viewer profiles (demographic, psychographic, and behavioral attributes), [and] select[ing] and present[ing] advertisements based on user profiles derived from one of the following: a demographic database, volunteered information, profiles, or an autonomous agent.” (Plotnick, para. 131).

Barton is directed to “a method wherein the first or last number of seconds of a commercial break are carefully authored to provide a ‘teaser’ to entice the viewer to watch multiple commercials during the commercial break instead of skipping the commercial break using the fast forward or jump functions of [a] DVR. (Barton, Abstract). “A bookending function displays an advertisement before and/or after a program that has been recorded on the DVR’s storage device is played to the viewer.” (Barton, Abstract). Specifically, the method of Barton retrieves an advertisement, and displays it prior to a selected program that has been previously recorded is run. (Barton, Abstract).

Ward is directed to a “system and method for utilizing data stored in an EPG database for modifying advertisement information. (Ward, Abstract). Specifically, Ward discusses a method where “a service provider and/or advertiser can transmit a single advertisement to all the television stations regardless of their geographic location and other user specific information.” (Id.). The geographic location-specific information for each program is retrieved from EPG data, and inserted into associated advertisements destined for the corresponding geographic location. (Id.).

While Plotnick, Barton, and Ward discuss presenting a customized advertisement, an alternate advertisement, or a portion of an advertisement to a viewer of previously recorded programming, Plotnick, Barton, and Ward fail to disclose, teach, or suggest “*wherein the advertisement is displayed in a cell within the electronic program guide, the advertisement being displayed adjacent to an associated media content data, the cell corresponding to at least one of a time of day, a type of a program, or a program channel on which the associated media content data is to be broadcast*” as recited in amended independent claims 1, 22, 35, 40, and 45. Thus, for at least these reasons, Plotnick, Barton, and Ward, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to disclose, teach, or suggest the features of independent claims 1, 22, 35, 40, and 45, amended as discussed in the interview. Independent claims 1, 22, 35, 40, and 45 are allowable for at least these reasons.

Dependent claims 2-3 and 6-21 depend from independent claim 1, **dependent claims 23-24 and 28-34** depend from independent claim 22, **dependent claims 36-39** depend from independent claim 35, **dependent claims 41-44** depend from independent claim 40, and **dependent claims 46-47 and 53-63** depend from independent claim 45. Dependent claims 2-3, 6-21, 23-24, 28-34, 36-39, 41-44, 46-47, and 53-63 are allowable by virtue of this dependency, as well as for additional features that each recites.

For example, Plotnick, Barton, and Ward fail to disclose, teach or suggest the features of dependent claim 33. Plotnick, Barton, and Ward fail to disclose, teach or suggest “*A portable client device comprising the media content playback system as recited in claim 22,*” as recited in dependent claim 33. The Office alleges that Plotnick (at paragraph [0099]) teaches the features of dependent claim 33. (Office Action, page 8, lines 7-9). Applicant respectfully disagrees.

With regard to the passage cited by the Office, and the associated surrounding passages, Plotnick discusses a Personal Video Recorder (PVR), which enables a viewer to digitally store programming for subsequent viewing. (Plotnick, para. [0096]). Plotnick describes a PVR as a device located in the residence, the head-end or central office, in the distribution network, as part of the Internet, or distributed over any or all of these locations. (Id.). Plotnick’s discussion of PVRs includes a discussion of residential devices (beginning at para. [0104]) and head-end devices (beginning at para. [0118]), but does not include a discussion of portable devices. (Plotnick, para. [0095]-[0129]).

While Plotnick discusses the functions of a PVR, Plotnick fails to disclose, teach or suggest “*A portable client device comprising the media content playback system as recited in claim 22,*” as recited in dependent claim 33. Thus, Plotnick fails to disclose, teach or suggest the features of dependent claim 33.

Barton and Ward fail to remedy the deficiencies in Plotnick with regard to dependent claim 33. While Barton discusses television-based DVR, and Ward discusses electronic program guides, Barton and Ward fail to disclose, teach, or

suggest “*A portable client device comprising the media content playback system as recited in claim 22,*” as recited in dependent claim 33. Therefore, Barton and Ward fail to remedy the deficiencies in Plotnick with regard to dependent claim 33, as Barton and Ward fail to disclose, teach, or suggest the features of dependent claim 33. Thus, Plotnick, Barton, and Ward, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to disclose, teach, or suggest the features of dependent claim 33.

Therefore, dependent claims 2-3, 6-21, 23-24, 28-34, 36-39, 41-44, 46-47, and 53-63 are allowable for at least these reasons.

Independent claim 64, as presently amended, recites in part:

render an advertisement, in a **cell within** the electronic program guide, the advertisement being rendered **adjacent** to an associated media content data, the **cell corresponding** to at least one of a time of day, a type of a program, or a program channel on which the associated media content data is to be broadcast

Applicant respectfully submits that Plotnick, Barton, and Ward, whether taken alone or in combination, fail to disclose, teach, or suggest the features of independent claim 64.

As discussed above, Plotnick, Barton, and Ward discuss presenting a customized advertisement, an alternate advertisement, or a portion of an advertisement to a viewer of previously recorded programming. However,

Plotnick, Barton, and Ward fail to disclose, teach, or suggest “*render an advertisement, in a cell within the electronic program guide, the advertisement being rendered adjacent to an associated media content data, the cell corresponding to at least one of a time of day, a type of a program, or a program channel on which the associated media content data is to be broadcast*

Dependent claims 65-66, 68 and 70-75 depend from independent claim 64, and are allowable by virtue of this dependency, as well as for additional features that each recites.

For example, Plotnick, Barton, and Ward fail to disclose, teach or suggest the features of dependent claim 75. Plotnick, Barton, and Ward fail to disclose, teach or suggest “*further comprising computer executable instructions that, when executed, direct the client device to obtain the advertisement based on at least one of a time of day, a type of the program, and a program channel on which the program is broadcast,*” as recited in dependent claim 75. The Office alleges that Plotnick (at paragraph [0158]) teaches the features of dependent claim 75. (Office Action, page 9, lines 19-22). Applicant respectfully disagrees.

With regard to the passage cited by the Office, Plotnick discusses “determin[ing] whether the current session **profile** matches any of the historical **profiles** in the profile database.” (Plotnick, para. [0158]). If a match exists, Plotnick uses the profile to select an advertisement, otherwise, the current session **profile** is used to select an advertisement. (Id.). Plotnick discusses that a **profile** is created by analyzing **viewer behavior**. (Plotnick, para. [0131]). Specifically, Plotnick states that a profile is created by “anaz[ing] viewer behavior (shows watched, channel surfing habits, commercial watching, etc.), [and creating] viewer profiles (demographic, psychographic, and behavioral attributes), [and] select[ing] and present[ing] advertisements based on user profiles derived from one of the following: a demographic database, volunteered information, profiles, or an autonomous agent.” (Id.).

In contrast, Plotnick fails to disclose, teach or suggest “*further comprising computer executable instructions that, when executed, direct the client device to obtain the advertisement based on at least one of a time of day, a type of the program, and a program channel on which the program is broadcast,*” as recited in dependent claim 75. Thus, Plotnick fails to disclose, teach or suggest the features of dependent claim 75.

Barton and Ward fail to remedy the deficiencies in Plotnick with regard to dependent claim 75. While Barton discusses television-based DVR, and Ward discusses electronic program guides, Barton and Ward fail to disclose, teach, or suggest “*further comprising computer executable instructions that, when executed,*

direct the client device to obtain the advertisement based on at least one of a time of day, a type of the program, and a program channel on which the program is broadcast,” as recited in dependent claim 75. Therefore, Barton and Ward fail to remedy the deficiencies in Plotnick with regard to dependent claim 75, as Barton and Ward fail to disclose, teach, or suggest the features of dependent claim 75. Thus, Plotnick, Barton, and Ward, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to disclose, teach, or suggest the features of dependent claim 75.

Therefore, dependent claims 65-66, 68 and 70-75 are allowable for at least these reasons.

B. Claims 4-5, 25-27, 48-50, and 67-68 stand rejected under 35 U.S.C. § 103(a) as being obvious over Plotnick in view of Barton, in further view of Ward, and in further view of U.S. Patent No. 6,909,837 B1 to Unger (hereinafter “Unger”). Applicant respectfully traverses the rejection.

Dependent claims 4-5 depend from independent claim 1, **dependent claims 25-27** depend from independent claim 22, **dependent claims 48-50** depend from independent claim 45, and **dependent claims 67-68** depend from independent claim 64. Dependent claims 4-5, 25-27, 48-50, and 67-68 are allowable by virtue of this dependency, as well as for additional features that each recites.

As discussed above, Plotnick, Barton, and Ward, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to disclose, teach, or suggest the features of independent claims 1, 22, 45 and 64, amended as discussed in the interview. Further, Unger fails to remedy the deficiencies in Plotnick, Barton, and Ward with regard to independent claims 1, 22, 45 and 64.

Unger is directed to a system of tagging frames of commercials that are recorded during the recording of video programming. (Unger, Abstract). When a user executes a fast forward (or other trick operation) during playback of the recording, the tagged frames are displayed as a static image or a condensed video clip. (Unger, Abstract). Generally, Unger describes presenting an advertising message to a user while the user skips the full-length commercials recorded during the program. (Unger, Abstract).

However, Unger fails to disclose, teach, or suggest “*wherein the advertisement is displayed in a **cell within** the electronic program guide, the advertisement being displayed **adjacent** to an associated media content data, the **cell corresponding** to at least one of a time of day, a type of a program, or a program channel on which the associated media content data is to be broadcast*” as recited in amended independent claims 1, 22, and 45, or “*render an advertisement, in a **cell within** the electronic program guide, the advertisement being rendered **adjacent** to an associated media content data, the **cell corresponding** to at least one of a time of day, a type of a program, or a program*

channel on which the associated media content data is to be broadcast" as recited in amended independent claim 64. Therefore, Unger fails to remedy the deficiencies in Plotnick, Barton, and Ward with regard to independent claims 1, 22, 45 and 64. Plotnick, Barton, Ward and Unger, taken alone or in combination, (assuming for the sake of argument that they can be combined), fail to disclose, teach, or suggest the features of independent claims 1, 22, 45 and 64. Thus, Plotnick, Barton and Unger, taken alone or in combination fail to disclose, teach, or suggest the features of dependent claims 4-5, 25-27, 48-50, and 67-68 by virtue of their dependency on independent claims 1, 22, 45 and 64. Dependent claims 4-5, 25-27, 48-50, and 67-68 are allowable for at least these reasons, as well as for additional features that each recite.

CONCLUSION

For at least the foregoing reasons, claims 1-50, 53-68, and 70-75 are in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejections and an early notice of allowance. If any issue remains unresolved that would prevent allowance of this case, **Applicant requests that the Examiner contact the undersigned attorney to resolve the issue.**

Respectfully submitted,

Lee & Hayes, PLLC
Representatives for Applicant

/Patrick D.S. Reed/ Dated: July 31, 2008

Patrick D.S. Reed (patrick@leehayes.com; x252)
Registration No. 61,227
Christopher W. Lattin (christopher@leehayes.com; x263)
Registration No. 56,064
Customer No. 22801

Telephone: (509) 324-9256
Facsimile: (509) 323-8979
www.leehayes.com